

**Office of Zoning and Administrative Hearings
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Before: Françoise M. Carrier, Hearing Examiner

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Board of Appeals Case No. S-2735
(OZAH Referral No. 09-2)

HEARING EXAMINER'S REPORT AND RECOMMENDATION

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I. SUMMARY

Current Zone and Use:	R-200 zoning, developed with a single-family, residential structure used as a small group home for eight senior adults suffering from dementia.
Proposed Special Exception:	Petitioners seek to expand their group home from eight residents to 15, which is considered a large group home and requires a special exception. No exterior changes are proposed.
Community:	One neighborhood resident wrote regarding concerns about the proposed group home and group homes in general. He suggested three conditions to be placed on the special exception, which are addressed in the body of this report.
MNCCPC:	The Montgomery County Planning Board and its Technical Staff recommend approval of the petition.
Hearing Examiner:	The Hearing Examiner recommends approval of the petition on grounds that it satisfies the general and specific conditions for the use and would have no inherent or non-inherent adverse effects sufficient to warrant denial.

II. STATEMENT OF THE CASE

Petition S-2735, filed July 21, 2008, requests a special exception under Section 59-G-2.26 of the Montgomery County Zoning Ordinance for a large group home, to be operated within an existing residential structure that currently houses a small group home, located at 4101 Bel Pre Road, Rockville, Maryland, in the R-200 Zone, known as Lot 1, Block 36 of the Bel Pre Woods Subdivision, Tax Account No. 13-01380591.¹ Petitioners Tanie and Pierre Guirand seek to increase the number of residents in their group home from eight, which is permitted as of right in the R-200 Zone as a small group home, to 15, which requires a special exception.

Technical Staff of the Maryland-National Capital Park & Planning Commission ("M-NCPPC") reviewed the present petition and, in a report dated October 27, 2008, recommended approval with conditions.² See Ex. 16. Staff submitted supplemental information, responding to questions from the Hearing Examiner, on November 13, 2008. See Ex. 19. The Montgomery County Planning Board

¹ The Hearing Examiner hereby takes official notice of the Maryland Department of Assessments and Taxation Real Property Database, from which the tax account number was taken.

² The Staff Report has been liberally paraphrased and quoted in Part III of this report.

(“Planning Board”) considered this petition on November 6, 2008 and voted 4 to 0 to recommend approval based on the findings in the Staff Report. See Ex. 18.

On August 8, 2008 the Board of Appeals scheduled a public hearing in this matter for November 14, 2008, to be conducted by a hearing examiner from the Office of Zoning and Administrative Hearings. The hearing was convened as scheduled, at which time testimony and other evidence were received in support of the proposed special exception. No evidence was presented at the hearing in opposition to the proposed special exception, and the record reflects no written opposition, although one individual suggested some conditions of approval. The record was held open to permit the submission of a revised site plan/landscape plan, and was later reopened again to accept a second revised plan and comments from Technical Staff. The record closed on January 23, 2008.

III. BACKGROUND

For the reader’s convenience, background information is grouped by subject matter.

A. The Subject Property and Neighborhood

The subject property consists of approximately 24,076 square feet of land located at the northwest corner of Bel Pre Road and Georgia Avenue (MD Route 97) in Rockville. The site is developed with a 5,385-square-foot residential structure that is currently used as a group home known as “Angel Gardens,” providing care for eight senior adults suffering from dementia. The site is relatively flat. It has 175 feet of frontage along Bel Pre Road and approximately 116 feet of frontage along a service road bordering Georgia Avenue. The property has two driveway entrances along Bel Pre Road, leading to a parking area striped for ten parking spaces and a one-car garage. The property also has a driveway on the abutting Georgia Avenue service road, leading to a two-car garage that sits behind a gated fence.

The site is adequately landscaped to preserve a residential appearance, and to satisfy Zoning Ordinance requirements for a special exception parking facility in a residential zone. The rear and

side yards of the subject property are entirely enclosed with a six-foot fence to prevent residents from wandering into the street. The property's Bel Pre Road frontage is also enclosed by a six-foot, wooden fence that largely obscures the view of the parking area.

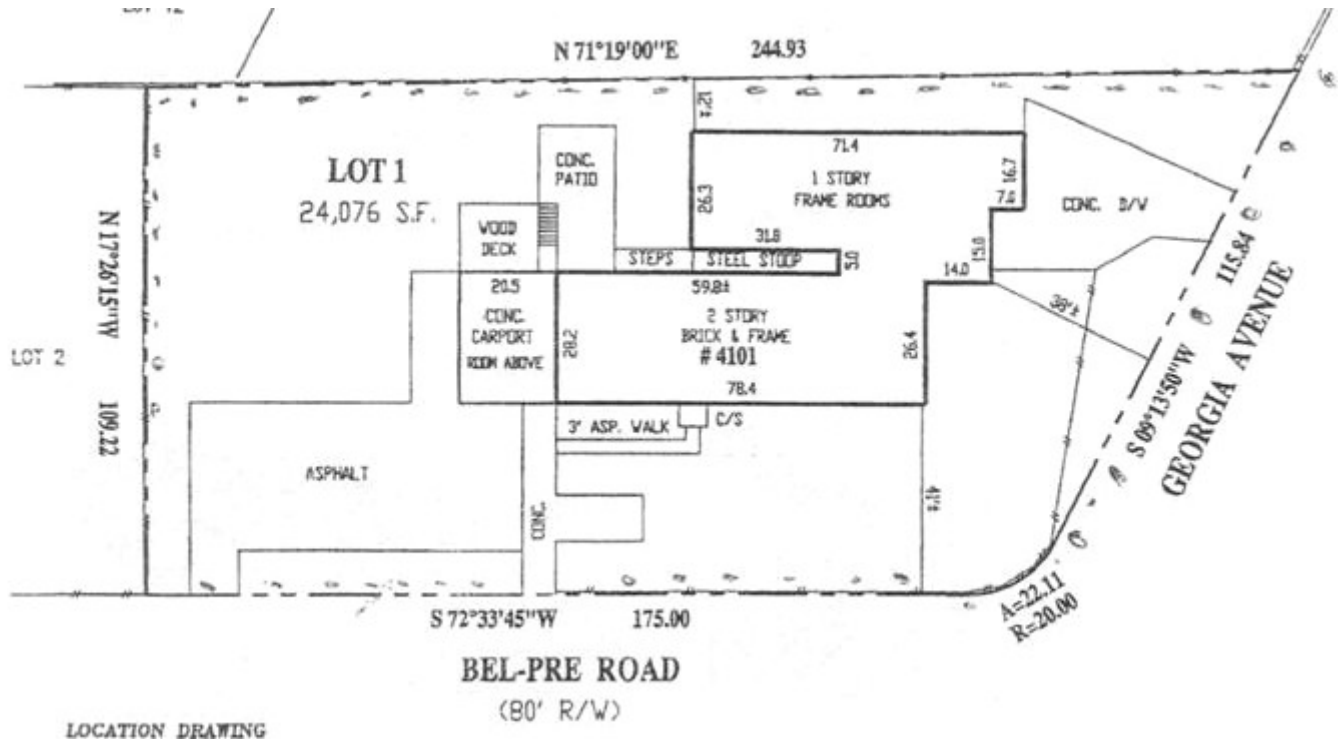
As show on the general location map that follows, the subject property borders residential properties in the R-200 Zone to the north and west. To the south, it confronts a dental office operating by special exception. To the east, across the six lanes of Georgia Avenue, it confronts a large religious use and a multi-family residential development.

General Location Map, Attachment 1 to Staff Report, Ex. 16



The site layout is shown on the property location drawing below.

Property Location Drawing, Excerpted from Ex. 4



The site and its immediate surroundings are shown in the photographs that follow, all of which are taken from Attachment 3B to the Staff Report except where otherwise indicated.

Georgia Avenue Frontage



Front of Existing Structure



Front Parking Lot, Ex. 22(a)



Georgia Avenue Service Road Entrance



Georgia Avenue Two-Car Garage, Inside Fence



Bel Pre Road Looking West



Bel Pre Road Looking East



Technical Staff has drawn a neighborhood boundary on the General Location Map shown on page 5, which encompasses properties within an area defined by Bel Pre Road, Georgia Avenue, Carrolton Road, Manor Park Drive and Chesterfield Road. In light of the minor impacts associated with increasing the size of the group home, the Hearing Examiner agrees with Staff's suggested neighborhood except to the south. Bel Pre Road is a major roadway, but the Hearing Examiner nonetheless includes in the general neighborhood the lots and land uses fronting on Bel Pre Road from Georgia Avenue to the first cross street west of Georgia, Chesterfield Road. These structures are within sight and/or sound of the subject property, and therefore should be considered in evaluating its impacts. The general neighborhood as thus defined consists entirely of single-family residential homes. Directly across Bel Pre Road is a dental office in a residential structure. Outside the defined general neighborhood, the area on the east side of Georgia Avenue contains multi-family buildings in the R-20 Zone and the PRC Zone (Planned Retirement Community Zone, part of the large Leisure World development), as well as the religious institution mentioned earlier.

B. Master Plan

The subject property is within the area covered by the *1994 Approved and Adopted Aspen Hill Master Plan* (the "Master Plan"), which shows the subject site with single family residential zoning and affirms its existing R-200 classification, which permits a large group home as a special exception. Technical Staff concludes that the proposed use would not adversely affect the surrounding community and would be consistent with the goals and objectives of the Master Plan. See Ex. 16 at 4.

C. Proposed Use

Petitioners have operated a small group home on the subject site under the name Angel Gardens for two years. Due to the need for affordable housing for seniors in need of special services, they seek to expand Angel Gardens to a large group home for up to 15 senior adults suffering from dementia. The existing structure has 14 bedrooms, two living rooms, two kitchens and four bathrooms, as well as an outdoor space for residents. Currently, the second-floor bedrooms are

vacant. As noted earlier, the backyard is entirely fenced, and the site has adequate landscaping. Petitioners plan to have three employees on site during the day, in shifts from 8:00 or 9:00 a.m. to 8:00 p.m., as well as one employee from 8:00 p.m. to 8:00 a.m. and a part-time employee who provides activity therapy each afternoon from 2:00 to 4:00. Petitioner Tanie Guirand also spends some time on site during the course of the day, delivering groceries and taking residents to medical appointments off-site, and Petitioner Pierre Guirand sometimes visits the site as well. Mr. and Ms. Guirand operate two group homes, so they divide their time between them. They also have partnerships with local high schools for community service. To accommodate time on site by the Petitioners and possible additional part-time employees (such as someone who might come play music for the residents), Petitioners request approval for up to five employees on site at one time. Petitioners routinely receive very few deliveries, since they do their own grocery shopping. They request approval for up to three deliveries per month.

Petitioners intend to maintain their current visiting hours, 10:00 a.m. to 7:00 p.m. seven days per week. Ms. Guirand testified that the number of visitors varies, but there are never very many at one time. She indicated that some residents have no local family members and receive no visitors, while others receive a monthly visit, and one visitor's wife visits every day. Ms. Guirand added that visits tend to be short because the residents' medical condition is such that they do not recognize their visitors, which is painful for the visitors. Angel Gardens does not transport its residents to off-site locations for any regular activities, but rather has an activity therapist come to the site. The only off-site trips described for residents are for medical appointments. The residents do not drive, and most use an assistive device to walk. Petitioners testified that they have never had any parking problems, nor have they had any complaints from neighbors.

Petitioners request two waivers related to parking, which are intended to avoid re-locating the existing parking area. Under Section 59-E-2.83 of the Zoning Ordinance, a special exception parking facility in the R-200 Zone is required to be at least 24 feet from the side property line and 40 feet from the front property line. The existing parking lot on the subject site is about nine feet from both the side

and the front lot lines. Accordingly, Petitioners request a waiver of approximately 15 feet of the side yard setback and 31 feet of the front yard setback. These are significant waivers, as the setbacks provided are less than half of what the Zoning Ordinance calls for. Technical Staff argues that the waivers are justified. They note that the site is long and narrow, and that the orientation of the existing structure, coupled with a county drainage easement “make it impractical to bring the existing parking facility into compliance with the required front and side yard setback standard.” Ex. 16 at 5.

Staff notes that strict compliance with the setback standards would reduce the safety of vehicular access. Petitioners argue that strict compliance would reduce the open space available to residents in the backyard and detract from the residential appearance of the site. Staff also notes that no commercial-type lighting is proposed for the parking area, and that under the proposed Site Plan/Landscape Plan, adjacent homes would be protected from potential noise, glare and reflection of automobile lights. This conclusion appears to be based in part on the existence of a fence on the neighboring property to the west. See Ex. 16 at 4. Due to the possibility that the present or a future owner of the adjoining property to the west might choose to remove that fence, the recommended conditions of approval require Petitioners to install a six-foot fence along the western edge of the parking lot if the adjoining neighbor removes the existing fence and does not replace it within six months.

Petitioners have submitted the Site Plan/Landscape Plan shown on the page 14, which depicts existing landscaping. Under Section 59-E-2.83, a special exception parking facility in a residential zone must be screened from all abutting lots, in a manner that is compatible with the area’s residential character. Screening must be at least six feet high, and must consist of evergreen landscaping, a solid wood fence, a masonry wall, a berm, or a combination of the above. Along street rights-of-way, screening must be at least three feet high. Existing fencing provides more than adequate screening for the parking area from Bel Pre Road. The only lot that abuts the parking facility is a residential property to the west. As noted earlier, the abutting property currently has a wooden fence along its property line with the subject property. This fence is 4.5 feet in height along

the Angel Gardens parking area. During the pendency of this case, Petitioners planted a row of Leyland Cypress evergreens along the fence, as well four evergreen holly bushes, two deciduous Rose of Sharon bushes and a Maple tree. This landscaping is currently immature, as may be seen in the photograph below, but together with the requirement that the Petitioners install a fence if their neighbor's fence is removed, the Hearing Examiner finds that it satisfies the screening requirement under Section 59-E-2.83.

The Maple along the west side of the parking lot, as well as two Maples along the north side of the parking lot and one along the south side, are required to comply with the requirement under Section 59-E-2.83 that trees must provide shade to at least 30 percent of the parking area. The Hearing Examiner accepts Technical Staff's conclusion that this requirement is satisfied.

Landscape Plantings Along Western Edge of Parking Lot, from Ex. 31(a)



Site Plan/Landscape Plan, Exhibit 29



12/18/08 Correction Plan
 1) Maple at (22A) 2, 2 Street Apart
 due to County easement

CONSUMER INFORMATION NOTES:

1. This plan is a benefit to a consumer insofar as it is required by a lender or a title insurance company or its agent in connection with contemplated transfer, financing or re-financing.
2. This plan is not to be relied upon for the establishment or location of fences, garages, buildings, or other existing or future improvements.
3. This plan does not provide for the accurate identification of property boundary lines, but such identification may not be required for the transfer of title or securing financing or re-financing.
4. Building line and/or Flood Zone information is taken from available sources and is subject to interpretation of originator.

Notes

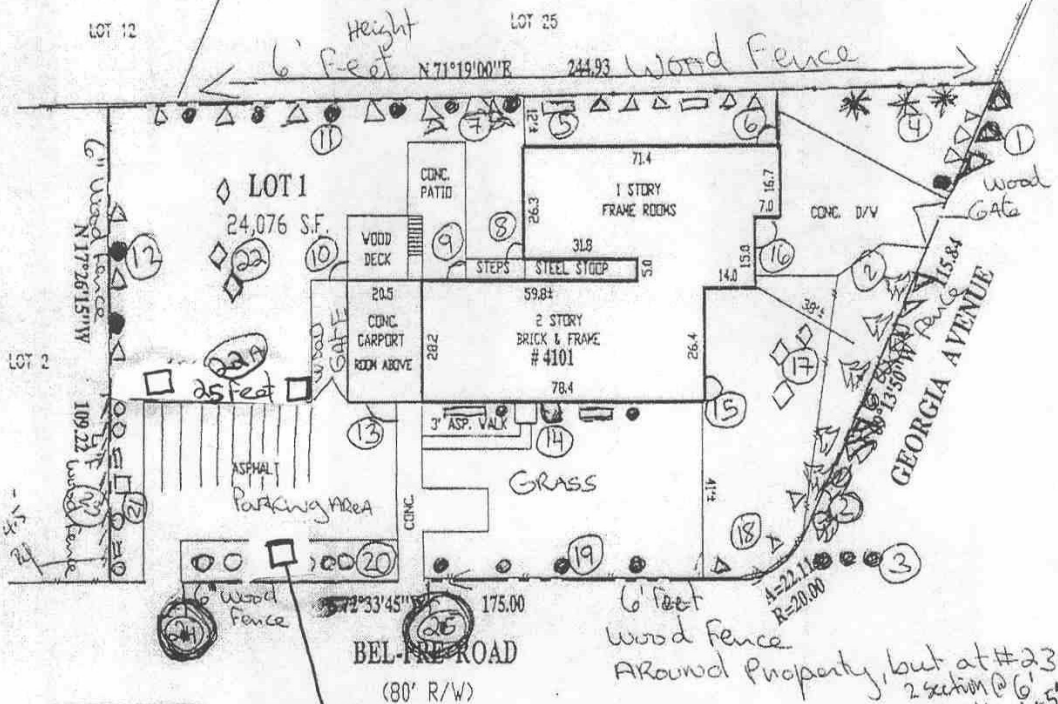
1. Flood zone "C" per H.U.D. panel No. 0150 B
2. Setback distances as shown to the principal structure from property lines are approximate. The level of accuracy for this drawing should be taken to be no greater than plus or minus 3 Feet

SUBMITTED BY APPLICANT
 NOV. 18, 2008

* TREE LOCATION (STAFF SUGGESTION)
 12/18/08
 * MUST BE 3' CALIPER @ PLANTING

- → Holly Shrubs
- △ → Leland cypress
- → MAPLE
- ◇ → APPLE trees
- ▭ → Rose of Sharon
- * → Bamboo
- ⊙ → Arborvitae
- ⊙ → Traffic Shrubs
- ⊙ → Safety Mirror
- ⊙ → Pine tree

2) Maple at (26) Front of Bel Pre rd



LOCATION DRAWING
 LOT 1, BLOCK 36, PLAT ONE

BEL-PRE WOODS

MONTGOMERY COUNTY, MARYLAND

EXHIBIT NO. 21(a)
 REFERRAL NO. S-2735

D. Lighting, Signage, Utilities, Environment and Traffic

Exterior lighting consists of residential-type fixtures, which Technical Staff anticipates will cause no spillover onto adjacent properties. No signage is proposed. The site is currently and will continue to be served by adequate utilities. The proposed special exception would involve no land disturbance, would have no environmental impacts and has been found exempt from the County's forest conservation law. See Ex. 16, Attachment 8; Ex. 7.

Transportation Planning Staff at the MNCPPC reviewed the existing use and the proposed expansion to a group home. Based on two days of observation at the existing facility, Staff concluded that the existing use generates a maximum of two trips during each of the morning and evening peak hours, and that the expansion would generate one additional trip during each of the peak hours. See Ex. 16 at 4. These numbers are below the 30-new-trip threshold for a Local Area Transportation Review traffic study, and the four-new-trip threshold for mitigation requirements under Policy Area Mobility Review. Accordingly, the requirements of the county Growth Policy are satisfied. See Ex. 16, Attachment 6. Transportation Planning Staff concludes, moreover, that the proposed use will not have an adverse effect on the transportation network in the immediate local area. See *id.*

E. Community Participation

The record contains two letters from Raymond Ramsay, who resides at 13924 Blair Stone Lane in Silver Spring, more than a mile east of the subject site and about two blocks south of Bel Pre Road.³ See Exs. 13 and 28. Mr. Ramsay does not oppose the requested special exception, but recommends the following three conditions:

1. The property's peripheral curbs be painted yellow (owner's expense) and designated as no parking zones.
2. A large, fixed mirror be permanently installed (owner's expense) at the property's Bel Pre Road exit for the safety of vehicles entering and exiting the site and those turning from Georgia Avenue onto Bel Pre Road.

³ The Hearing Examiner hereby takes official notice of the ADC map of Montgomery County for the location of Blair Stone Lane.

3. The property owners be held accountable “for the physical safeguarding of clients prior to entering and exiting motorized transportation vehicles.” Ex. 13.

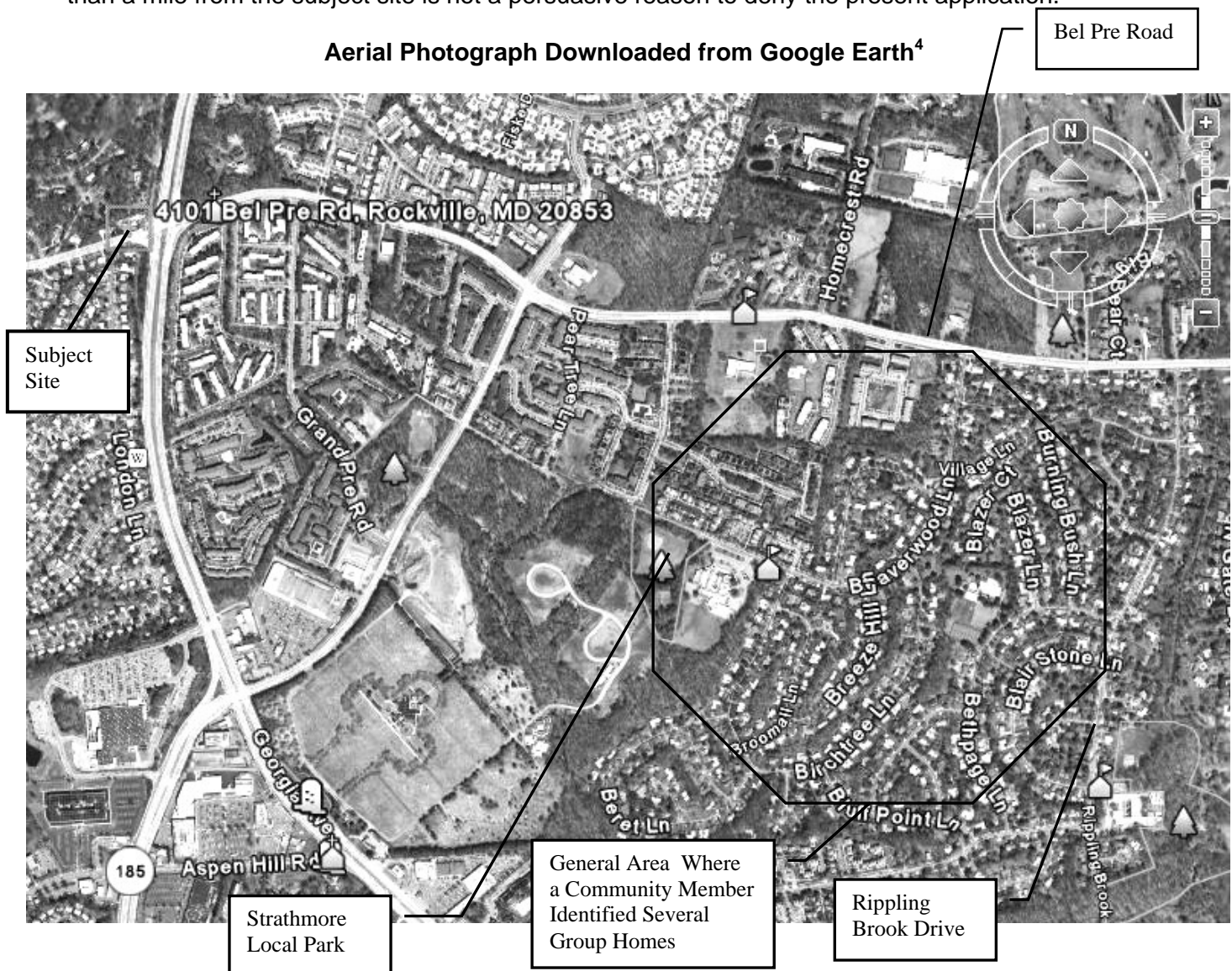
Mr. Ramsay’s concerns are based on several misconceptions about the proposed special exception. He assumed that the ten parking spaces are new, additional parking spaces, when in fact they are existing parking spaces. He further assumed that these parking spaces would be heavily used during “peak traffic loading times (4 pm to 10 pm)” as group home residents are dropped off and picked up for off-site activities. Mr. Ramsay anticipates that group home residents will not always be driven onto the actual site. He considers it “highly likely” that they will be dropped off at the curb on Bel Pre Road to minimize commuting delays. Ex. 13.

The evidence establishes unequivocally that the residents of the proposed group home will not be taken off-site for any regular activities, but will take part in activities provided within the home. There is no evidence to support Mr. Ramsay’s assertion that residents will be dropped off on Bel Pre Road. The evidence demonstrates that when residents leave the site, they will do so in a car with Ms. Guirand, who will drive into the site to park and bring residents back into the building. The Guirands are very aware of the need to carefully supervise residents with dementia, having fenced in the entire backyard to prevent residents from wandering into the street. Allowing residents to be dropped off at the curb would be inconsistent with the level of care described at this facility. Despite the factual errors underlying Mr. Ramsay’s suggestion, Mr. Guirand installed two mirrors, one at each of the Bel Pre Road driveway entrances, to improve the visibility of cars entering and exiting the site. See Tr. at 26.

In a second letter after the hearing, Mr. Ramsay made no further comments concerning the case at hand, but asked a number of questions regarding the County’s regulation of group homes in general. He also identified 12 group homes in his immediate neighborhood, south of Bel Pre Road, east of Strathmore Local Park and west of Rippling Brook Drive. See Ex. 28. The existence of such a large number of group homes in close proximity to one another, if verified as legal uses, could make it difficult for a property owner in that neighborhood to obtain approval of a special exception for a large group home, under the non-proliferation elements of the special exception approval standards. See §

59-G-1.21(a)(4) and (7). Group homes with up to eight residents are permitted as of right, however, so it is possible that some or all of the ones Mr. Ramsay identified are small group homes, which operate without the need for a special exception. As may be seen on the aerial photograph below, all of the group homes Mr. Ramsay identified are separated from the subject site and from the neighborhood defined for this case by Bel Pre Road, Georgia Avenue, extensive multi-family developments, two parks and an elementary school. In the Hearing Examiner's view, expanding the number of residents permitted at the subject site from eight to 15 will have no discernible impact on the neighborhood where Mr. Ramsay lives, so the concentration of group homes he identified more than a mile from the subject site is not a persuasive reason to deny the present application.

Aerial Photograph Downloaded from Google Earth⁴



⁴ The Hearing Examiner hereby takes official notice of Google Earth's widely recognized mapping capabilities.

The Hearing Examiner has responded to Mr. Ramsay's concerns in a letter providing general information about the special exception process in Montgomery County, as well as a suggestion that complaints about other group homes be made to the Department of Permitting Services. See Ex. 33.

IV. SUMMARY OF HEARING

A. Applicant's Case in Chief

1. Tanie Guirand

Ms. Guirand described the genesis of the present application. She stated that the home on the subject property was owned by an individual who became a hoarder towards the end of his life, so the property was well known in the Aspen Hill region for its yard filled with metal junk. As a nurse, Ms. Guirand started Angels Garden with five beds and, with the support of her neighbors, made the home into an environment that the residents really enjoy. Ms. Guirand adopted the Staff Report as part of the Petitioners' case.

Ms. Guirand noted that the residents of the home do not drive, nor are they taken to off-site activities. An activity therapist comes to the site every day, and doctors also come to the site when needed. Ms. Guirand stated that the home currently has two full-time employees during the day, plus the part-time activity therapist who arrives around 2:00, and one employee at night. With the additional residents proposed in this application, Ms. Guirand intends to add one more full-time staff person to each shift, day-time and night. She noted that the special exception petition requests approval for five staff members on site at one time, in case they need to add one more person. Ms. Guirand is on site at various times of the day, in addition to the full-time staff, but she takes care of two residential care homes, and her duties include off-site activities like buying groceries and taking residents to medical appointments. Mr. Guirand interjected that he sometimes stops by for a couple of hours, as well, so the number of staff members varies. Ms. Guirand observed that most of the employees arrive by public transportation.

Ms. Guirand testified that the existing facility has never had any parking problems. She stated that she receives about one delivery per month, from UPS. She finds it more cost-effective to do the grocery shopping herself. Ms. Guirand indicated that a limit of three deliveries per month would be acceptable. She noted that she takes residents to medical appointments in a car, not a van. As for visitors, Ms. Guirand said the number of visitors varies. Some residents never get visitors, while one resident gets a visit from his wife every day. Family members will sometimes come for a brief visit, but Ms. Guirand said it is hard for them to see their parents due to the effects of Alzheimer's disease. As a result, they never have ten cars in the parking lot. The most Ms. Guirand can remember having is five or six when there is a special activity like someone coming to play music for the residents.

Ms. Guirand testified that she has had no complaints from neighbors. She stated that outdoor activities are limited to walking, sitting, or playing ball in the garden, but that at this stage of their lives, the residents are very quiet.

2. Pierre Guirand

Mr. Guirand explained that the fence between the parking area on the subject site and the adjacent property is on the adjacent property. He estimated that the fence is five feet tall. Mr. Guirand described landscaping that provides screening on that side of the parking lot, noting that he has planted six Leland Cypress trees and five Hollies along the parking lot. The Petitioners agreed to submit a revised site plan/landscape plan to provide more detail about the plantings and to show compliance with the requirement to provide shade over 30 percent of the parking lot.

Mr. Guirand stated that he and his wife installed a six-foot fence from the garage to the side property line and all along the rear property line and the Georgia Avenue frontage, enclosing the backyard to prevent residents from wandering into the street. Mr. Guirand noted that the fence along Bel Pre Road in front of the parking lot was built by the previous owner.

Mr. Guirand explained that the property has two garages: a one-car garage facing Bel Pre Road and a two-car garage facing Georgia Avenue. Thus, the site has three garage parking spaces in addition to the ten marked spaces in the parking lot.

Mr. Guirand stated that in response to Mr. Ramsay's letter, he installed two mirrors on the site, one at the Bel Pre Road entrance and one at the exit. He also confirmed that parking is not permitted along Bel Pre Road at this location.

B. People's Counsel

Martin Klauber, People's Counsel for Montgomery County, participated in questioning during the hearing. He made a closing statement in which he supported the proposed special exception, noting that the Petitioners are providing a badly needed service, and that by their demeanor one can tell they are the kind of people who provide good care to their residents. See Tr. at 27.

V. CONCLUSIONS

A special exception is a zoning device that authorizes certain uses provided that pre-set legislative standards are met. Pre-set legislative standards are both specific and general. The special exception is also evaluated in a site-specific context, because there may be locations where it is not appropriate. Weighing all the testimony and evidence of record under a "preponderance of the evidence" standard (see Code §59-G-1.21(a)), the Hearing Examiner concludes that the proposed special exception would satisfy the specific and general requirements for the use.

A. Standard for Evaluation

The standard for evaluation prescribed in Code § 59-G-1.21 requires consideration of the inherent and non-inherent adverse effects of the proposed use, at the proposed location, on nearby properties and the general neighborhood. Inherent adverse effects are "the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations." Code § 59-G-1.21. Inherent adverse effects, alone, are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are "physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by

unusual characteristics of the site.” Id. Non-inherent adverse effects, alone or in conjunction with inherent effects, are a sufficient basis to deny a special exception.

Technical Staff have identified seven characteristics to consider in analyzing inherent and non-inherent effects: size, scale, scope, light, noise, traffic and environment. For the instant case, analysis of inherent and non-inherent adverse effects must establish what physical and operational characteristics are necessarily associated with a large group home. Characteristics of the proposed use that are consistent with the characteristics thus identified will be considered inherent adverse effects. Physical and operational characteristics of the proposed use that are not consistent with the characteristics thus identified, or adverse effects created by unusual site conditions, will be considered non-inherent adverse effects. The inherent and non-inherent effects thus identified must be analyzed, in the context of the subject property and the general neighborhood, to determine whether these effects are acceptable or would create adverse impacts sufficient to result in denial.

Physical and operational characteristics associated with a large group home include a building large enough to house the number of residents requested; on-site parking sufficient to meet the requirements of the use and of the Zoning Ordinance; outdoor lighting consistent with residential standards and adequate for safe vehicular and pedestrian access at night; traffic associated with employees, visitors, deliveries and residents engaged in off-site activities; a modest level of outdoor activity associated with use of passive recreation areas; and noise from ambulances in emergencies. In the present case, Technical Staff concluded that the proposed facility would have no non-inherent adverse effects. See Staff Report at 6. Staff noted that based on the size, scale and scope of the proposed use, its inherent adverse effects would be minimal, and not likely to result in any unacceptable noise, traffic or environmental impacts. Staff also found that the available parking is adequate.

The Hearing Examiner agrees with Technical Staff that the proposed use presents no non-inherent characteristics, and further finds that the site has no unusual physical characteristics. The proposed group home would be consistent with features and operations typically found on a group

home site, and would not be unusual in any respect. The evidence supports a conclusion that the adverse effects of the proposed group home would be minimal, and that the use would not have any adverse effects sufficient to warrant denial.

B. Specific Standards

The specific standards for a large group home are found in § 59-G-2.26. As outlined below, the evidence of record demonstrates compliance with the specific standards.

Sec. 59-G-2.26. Group home, large.

- (a) When allowed. In addition to the general conditions required in division 59-G-1, a group home may be allowed upon a finding by the Board of Appeals:
 - (1) That any property to be used for a group home is of sufficient size to accommodate the proposed number of residents and staff.

Conclusion: The Hearing Examiner agrees with Technical Staff that the subject site has sufficient size for the number of residents and staff proposed, given that it has 14 bedrooms for 15 residents, plus common spaces and outdoor space.

- (2) That the site to be used as a group home for children provide ample outdoor play space, free from hazard and appropriately equipped for the age and number of children to be cared for.

Conclusion: Not applicable.

- (3) That off-street parking must be provided in the amount of one parking space for every 2 residents and one space for every 2 employees on the largest work shift. The Board may decrease the off-street parking where the method of operation or clientele indicates the decrease is warranted.

Conclusion: The proposed group home would have 15 residents and up to five employees on site at one time. This calls for a total of eleven parking spaces (eight for the residents and three for

the employees).⁵ The site has ten striped parking spaces in the parking lot, plus one garage parking space off of Bel Pre Road and two off of Georgia Avenue. Thus, the standard imposed in this paragraph is satisfied. Moreover, the undisputed evidence indicates that residents of the existing small group home on this site receive few visitors, and those who do come tend to stay only for a short time. The evidence supports a conclusion that the available parking is more than adequate.

- (b) Decision to be expedited. In order to expedite a decision regarding a proposed group residential facility, the Board must give priority consideration in scheduling a public hearing and in deciding petitions for such a facility.

Conclusion: No conclusion needed.

C. General Standards

The general standards for a special exception are found in Section 59-G-1.21(a). The Technical Staff report and Petitioner's written evidence and testimony provide sufficient evidence that the general standards would be satisfied in this case, as outlined below.

Sec. 59-G-1.21. General conditions:

- (a) A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:
 - (1) Is a permissible special exception in the zone.

Conclusion: A large group home is a permitted use in the R-200 Zone.

- (2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.

⁵ The Staff Report puts the required number of parking spaces at four. This is based in part on an erroneous interpretation of "residents" to mean the normal two-space residential parking requirement for a single-family home. In the Hearing Examiner's view, this parking requirement would logically be based on the number of group home residents, which in this case is 15. The Staff Report called for two parking spaces for staff, but the hearing testimony explained that there may be as many as five employees on site at one time: the Petitioners plan to increase the day-time staff to three, plus one of the Petitioners may be on site at some point during the day doing a delivery or picking up a resident to go to a doctor's appointment, and an activity therapist arrives every afternoon for group therapy.

Conclusion: The proposed use would comply with the standards and requirements set forth for the use in Code §59-G-2.26, as detailed in Part V.B. above.

- (3) Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the commission. Any decision to grant or deny special exception must be consistent with any recommendation in an approved and adopted master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.

Conclusion: The evidence supports Technical Staff's conclusion that the proposed use would be generally consistent with the recommendations of the *Aspen Hill Master Plan*, as discussed in Part III.B.

- (4) Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses. The Board or Hearing Examiner must consider whether the public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the special exception application was submitted.

Conclusion: The Hearing Examiner concludes, based on the preponderance of the evidence, that the proposed facility would be harmonious with the general character of the neighborhood. No changes are proposed to the exterior of the existing single-family structure, no new structures are proposed, and the intensity and character of activity, traffic and parking would increase only slightly with an increase from eight residents to 15. The evidence indicates that most activity takes place indoors, and that the residents seldom leave the facility. Outdoor use of the site is limited to quiet activities in the backyard, plus the arrival and departure of a small number of employees and visitors and an even smaller number of delivery vehicles. A community member has

identified 12 group homes a mile or more from the subject site, but none have been identified within the general neighborhood of the site, as defined in Part III.A.

The evidence demonstrates that public facilities and services will be adequate to support the proposed use, in light of the very small number of vehicular trips that would be generated and the continued availability of public utilities.

- (5) Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

Conclusion: The evidence supports the conclusion that due to the limited nature of the activities proposed on site, as described in the conclusion to the previous paragraph, the proposed use would not be detrimental to the use, peaceful enjoyment and economic value of surrounding properties or the general neighborhood.

- (6) Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

Conclusion: The evidence supports the conclusion that the proposed special exception would cause no objectionable noise, vibrations, fumes, odors, dust or physical activity at the subject site.

- (7) Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.

Conclusion: Technical Staff has identified two special exceptions in the general neighborhood, a dental office directly across Bel Pre Road and an accessory apartment that is no longer in use. See Staff Report at 8; Attachment 1. Staff notes that there are 24 properties in the defined neighborhood, with the result that with the special exception proposed in this case, eight percent of the properties would have a special exception. The Hearing Examiner agrees with

Technical Staff that this would not result in excessive concentration of special exception uses, nor would it increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter its predominantly residential nature.

- (8) Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

Conclusion: The evidence supports a conclusion that the proposed special exception would not adversely affect the health, safety, security, morals or general welfare of residents in the area of the subject site, due to the limited impacts of the proposed use as described in paragraph (4) above. Moreover, the proposed use could be of benefit to any neighborhood resident who finds that a family member has need of the services that this group home will offer.

- (9) Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.

Conclusion: The evidence supports the conclusion that the subject property would continue to be served by adequate public facilities with the proposed use and would have no adverse effect on public facilities.

- (A) If the special exception use requires approval of a preliminary plan of subdivision, the Planning Board must determine the adequacy of public facilities in its subdivision review. In that case, approval of a preliminary plan of subdivision must be a condition of the special exception.
- (B) If the special exception does not require approval of a preliminary plan of subdivision, the Board of Appeals must determine the adequacy of public facilities when it considers the special exception application. The Board must consider whether the available public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the application was submitted.

Conclusion: Subdivision approval would not be required. The Hearing Examiner accepts Technical Staff's conclusion that the very small number of vehicle trips the proposed use would generate can be accommodated by the local roadway network, and would not give rise to any traffic mitigation requirements under applicable Growth Policy standards.

- (C) With regard to public roads, the Board or the Hearing Examiner must further find that the proposed development will not reduce the safety of vehicular or pedestrian traffic.

Conclusion: The evidence supports a conclusion that the proposed use would have no detrimental effect on the safety of vehicular or pedestrian traffic on the public roads, as it would contribute only a minimal number of vehicles to area roadways.

- (b) Nothing in this Article relieves an applicant from complying with all requirements to obtain a building permit or any other approval required by law. The Board's finding of any facts regarding public facilities does not bind any other agency or department which approves or licenses the project.

Conclusion: No finding necessary.

- (c) The applicant for a special exception has the burden of proof to show that the proposed use satisfies all applicable general and specific standards under this Article. This burden includes the burden of going forward with the evidence, and the burden of persuasion on all questions of fact.

Conclusion: For the reasons stated above, the Hearing Examiner concludes that Petitioners have met their burdens of production and persuasion.

59-G-1.23 General Development Standards

Pursuant to Section 59-G-1.23, each special exception must comply with the development standards of the applicable zone where the special exception is located, unless the specific conditions for the use specify development standards. As shown in the table below, the proposed use would satisfy applicable development standards under the R-200 Zone. Applicable parking lot development standards are addressed in Part D below.

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Development Standards Table: R-200 Zone, Adapted from Staff Report at 9

Development Standards	Requirement	Provided
Lot Area (§59-C-1.322(a))	20,000 SF	24,076 SF
Lot Width (§59-C-1.322(b)): @ Front of Bldg Line @ Street	100' 25'	±175' ±215'
Yard Requirements (main building): From Street (§59-C-1.323(a)) From Adjoining Lot Side Yards (§59-G-2.37(b)(3)) One Side Both Sides Rear Yard (§59-C-1.323(b))	40' 12' 25' 30'	±40' ⁶ ±12' (to north) ⁷ ± 53' ±67' (to west)
Building Height (maximum) (§59-C-1.237)	50'	± 23' (ridge line)
Coverage (maximum net lot area) (§59-C-1.328)	25%	19.3%

Section 59-G-1.23 also requires compliance with forest conservation requirements under Chapter 22A and sign regulations under Article 59-F, and states that a special exception must incorporate glare and spill light control devices to minimize glare and light trespass and, in a residential zone, may not have lighting levels along the side and rear lot lines exceeding 0.1 foot candles. The present application is exempt from forest conservation requirements and proposes no signage. Technical Staff reports that the exterior lighting uses residential-type fixtures, and no spillover is anticipated. Moreover, fencing along the west side of the parking lot can be expected to substantially block the glare of headlights from an occasional vehicle using the parking lot after dark.

⁶ The property location drawing on page 6 indicates that at its closest point, the building is 41 feet from Bel Pre Road, plus or minus, and 38 feet from Georgia Avenue, plus or minus. Given that both of these measurements are found on a document with a scale of 40 feet to the inch, and are followed by the “plus or minus” symbol, the Hearing Examiner concludes that the structure can be considered in compliance with the building setback requirements.

⁷ The Hearing Examiner has departed from Technical Staff’s Development Standards Table with regard to building setbacks, finding that the only way the structure can be considered in compliance is if the 12-foot setback from the north property line is considered a “side” of the building, which makes the Georgia Avenue side the “front.” A corner lot can be considered to front on either street for setback purposes.

D. Parking Lot Waiver Requests

Petitioners' two waiver requests related to their parking lot are described in Part III.C. above. Petitioners seek to avoid relocating their parking lot, which has less than half the required setback from the front and side yards. The Hearing Examiner agrees with Technical Staff that these waivers should be granted. Due to the size and shape of the site and the location of the existing residential structure and a county drainage easement, moving the parking lot to a location that would meet the setback standards would be very difficult, and would reduce the size of the already-small backyard. This would reduce the area available for residents to spend time outdoors. Moreover, based on the small number of vehicular trips at the existing group home and the minor increase expected with the proposed expansion, the impact of the location of the parking area on the adjacent home appears to be minimal. Any potential impact would be mitigated by the vegetation, as it grows and fills in the space, and by the existing fence (as well as the proposed condition requiring Petitioners to install a fence if their neighbor's fence is removed).

VI. RECOMMENDATION

Based on the foregoing findings and conclusions and a thorough review of the entire record, I recommend that Petition No. S-2735, which requests a special exception under Section 59-G-2.26 of the Montgomery County Zoning Ordinance for a large group home, to be operated within an existing residential structure that currently houses a small group home, located at 4101 Bel Pre Road, Rockville, Maryland, in an R-200 Zone, be granted subject to the following conditions:

1. Petitioners shall be bound by all of their testimony and exhibits of record, including the Site Plan/Landscape Plan, Exhibit 29.
2. The large group home must be limited to seniors suffering from dementia, with a maximum of 15 residents. No more than five employees shall be on site at one time.
3. Visiting hours must be limited to 10:00 a.m. to 7:00 p.m., seven days per week.
4. Deliveries to the site must be limited to no more than three per month.

5. The subject facility must not have any exterior signage.
6. In the event that the fence currently in place along the western edge of the Bel Pre Road parking lot is taken down and not replaced within six months, Petitioners must erect a six-foot, wooden fence along the western edge of the parking lot for screening purposes.
7. Petitioners must obtain and satisfy the requirements of all licenses and permits, including but not limited to building permits or a use-and-occupancy permit, necessary to implement the special exception as granted herein. Petitioners shall at all times ensure that the special exception use and facility comply with all applicable codes (including but not limited to building, life safety and handicapped accessibility requirements), regulations, directives and other governmental requirements.

I further recommend, based on the foregoing findings and conclusions and a thorough review of the entire record, and that the two requested parking waivers be approved

Dated: February 25, 2009

Respectfully submitted,

Françoise M. Carrier
Hearing Examiner